

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION No. 878 of 2005****For Approval and Signature:****HON'BLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

Whether this case involves a substantial question
of law as to the interpretation of the

4 constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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JITENDRA CHANDULAL DOSHI - Applicant(s)

Versus

THE STATE OF GUJARAT - Respondent(s)

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Appearance :

MR SANDEEP N BHATT for Petitioner No(s).: 1.

MR GOHIL, Ld. APP for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL**Date : 19/07/2005****ORAL JUDGMENT**

Rule. Mr.Gohil, learned APP waives service of Rule.
With the consent of the parties, the matter is taken up
for final hearing today.

2.It is an admitted position that the vehicle of the petitioner bearing RT0 No.GJ-3W 5506 Qualis Car is seized and custody is taken over by the Police in connection with C.R. No.I-309/2004 of Morbi City Police Station for the offence under Section 302 and others and the said vehicle is treated as muddamal. As per the prosecution, blood stains were found in the vehicle and the procedure of taking sample FSL is also completed. It appears that the petitioner applied for getting back the custody of the vehicle by making application on 18.1.2005, but the learned Magistrate dismissed the application on 23.2.2005 on the ground that the FSL report is up till now not received. It appears that the petitioner carried the matter before the learned Sessions Judge by preferring revision and the learned Sessions Judge also, as per the order dated 19.3.2005 has rejected the revision and it is under these circumstances, the petitioner has approached this Court by preferring this petition.

3.Heard Mr.Bhatt, learned Counsel for the petitioner and Mr.Gohil, learned APP for the State.

4. As such, in my view, the issued is covered by the decision of the Apex Court in the case of ***"Sunderbhai Ambalal Desai v. State of Gujarat"***, reported in AIR

2003 SC, 638. In the said decision the Apex Court, while considering the question of giving custody of the muddamal of vehicles, observed at paragraphs 15, 16, 17 and 18 as under:

"15. Learned Senior Counsel Mr.Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to handover such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned Counsel appearing for the petitioners submitted that this question of handling over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If th said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person, if insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such

order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

5. If the matter is considered in light of the observations made by the Apex Court, it appears that in the present case the petitioner is registered owner of the vehicle and Mr.Bhatt, learned Counsel appearing for the petitioner, during the course of the hearing also produced a xerox copy of the registration certificate, which stands on the name of Jitendra Chandulal Doshi, the petitioner herein. Further no other person has claimed the vehicle. So far as FSL Report is concerned the samples are taken and is forwarded to the laboratory and the report is being awaited. It has been stated that the charge-sheet is filed and the investigation is over.

6. Under these circumstances, I find that no useful purpose would be served in allowing the vehicle to be in the custody of police and the custody of the vehicle deserves to be handed over to the registered owner and at the most, the condition can be imposed for production of the said vehicle as and when required by the Police and by the Court. Mr.Bhatt, learned Counsel for the petitioner has stated that the petitioner is

ready to give the undertaking to the Court as well as he is also ready to give the bonds for such purpose for the amount which may be deemed fit by the Court and he further submits that the petitioner undertakes not to transfer or alienate the vehicle in question without prior permission of the Court concerned.

7. Under the circumstances, I find that in view of the observations made by the Apex Court in the above referred decision, the custody of the vehicle deserves to be handed over to the petitioner on condition that the petitioner files undertaking before the concerned Trial Court that the vehicle shall not be transferred or alienated, in any manner whatsoever, without permission of the Court and shall be produced as and when required by the Police or by the Court in connection with the Criminal Case which is pending. In addition to the undertaking, the petitioner shall also furnish a personal bond and a surety of Rs.1,00,000/- (Rupees one lac only) for production of the said vehicle as and when required by the Police or by the Court in connection with the aforesaid criminal case. The custody of the vehicle shall be handed over to the petitioner by the police immediately after compliance of the aforesaid condition by the petitioner and, if so

reported by the concerned Trial Court.

8. The petition is allowed to the aforesaid extent.

Rule partly made absolute. Direct service is permitted.

19.7.2005

(Jayant Patel, J.)

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